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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,542	02/23/2004	David Roth	018367-9800-01	7764
23409	7590	10/11/2005		
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER GIMIE, MAHMOUD	
			ART UNIT	PAPER NUMBER
			3747	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,542

Applicant(s)

ROTH ET AL.

Examiner

Mahmoud Gimie

Art Unit

3747

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-49 is/are allowed.
- 6) ☒ Claim(s) 50-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 50-52 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Dykstra et al (6,145,487).

Dykstra et al discloses a choke operating assembly for operating a choke valve (40) in an internal combustion engine, the choke operating assembly comprising: an air vane (28), the air vane including a tab (49); and a choke linkage, the choke linkage including a first choke arm (34), a second choke arm (36), the second choke arm (36) including a protrusion (see figure 4); wherein the air vane (28), first choke arm (34), and second choke arm (36) are integrally formed as a unitary body.

With regard to claim 51, wherein the choke valve (40) is biased closed by a biasing member (44), and wherein the protrusion (figure 4) on the second choke arm (36) is coupled to the biasing member (44).

With regard to claim 52, wherein the tab (49) of the air vane is configured to interact with a stop lever (62) that is movable due to temperatures within the engine to cause the choke valve to remain in at least a partially open position during engine starting when the engine temperature is above a predetermined temperature.

Art Unit: 3747

With regard to claim 55, a choke lever (38) is coupled to the choke linkage.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dykstra et al (6,145,487).

Dykstra et al discloses all the limitations as applied to claims 50-52 above except for choke operating device is injection molded or is made of nylon.

At the time the invention was made; it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the choke operating device by injection molding or from nylon because applicant has not disclosed that doing so provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, further, would have expected applicant's invention to perform equally well with as disclosed by Dykstra et al because the automatic choke control is responsive to engine speed and temperature.

Response to Arguments

5. Applicant's arguments see response, filed 8/10/05, with respect to rejections of claims 1-49 have been fully considered and are persuasive. The rejections of claims 1-49 have been withdrawn.

Art Unit: 3747

6. Applicant's arguments filed on 8/10/05 with respect to claims 50-55 have been fully considered but they are not persuasive.

Applicant's argument that Dykstra does not disclose a tab is not persuasive because Dykstra discloses a thermally responsive plate that interacts with the air vane (22); see figures 4-8.

Applicant further argues that the claimed subject matter requires the air vane, the first arm and the second arm to be integrally formed as a unitary body, and Dykstra components are coupled together rather than integrally formed. This is not persuasive because applicant's components require linkage (30) to couple the first and second arms similar to that of Dykstra components. Therefore, the interpretation of integral formation is not permanently linking as suggested, but rather coupling as disclosed by Dykstra.

Allowable Subject Matter

7. Claims 1-49 are allowed over prior art of record.

8. The following is a statement of reasons for the indication of allowable subject matter: Claims 1,25 and 44 require thermally conductive assembly in direct contact with exhaust gases produced by the engine, which the prior art of record does teach or suggest.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).


Art Unit: 3747

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mahmoud Gimie whose telephone number is 571-272-4841. The examiner can normally be reached on Tuesday-Friday between 7 a.m. -3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on 571-272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG


MAHMOUD GIMIE
PRIMARY EXAMINER